UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,209	04/07/2004	Richard Lunak	050704/306103	7439

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EXAMINER
ST CYR, DANIEL

ART UNIT	PAPER NUMBER
2876	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
   Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 December 2007*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *15-30* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *15-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *07 April 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date *11/07*.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set forth in

37 CFR 1.17(e), was filed in this application after final rejection. Since this application is

eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e)

has been timely paid, the finality of the previous Office action has been withdrawn pursuant to

37 CFR 1.114. Applicant's submission filed on 10/31/07 has been entered.

Claim Rejections - 35 USC § 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

3.   Claims 15-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Frederick et al. (US 6,112,502; hereinafter "Frederick") in view of Lift et al. (US 5,797,515;

hereinafter "Lift").

        Re claims 15-17, 21-25 and 29-30: Frederick teaches a method including: inputting

information into a handheld device (reading device 542 in fig. 55) from indicia (358, 364, 366,

370 in fig. 40; "The reading device 348 is preferably a device for reading machine readable

indicia such as bar code" (col. 40, lines 62-63)) on an open shelving system, the information

identifying an item to be restocked to the open shelving system ("Alternatively, when all the

medical items have been removed from the storage location the user may operate the reading

device to read the further indicia adjacent the storage location representative of the condition that

all the medical items in the location have been depleted..." col. 6, lines 53-57; col. 41, lines 29-

31) (col. 56, lines 51-58; col. 6, lines 12-67; col. 41, line 44 through col. 42, line 53); inputting a

current quantity of the items to be restocked to the handheld device corresponding to the input

information (col. 6, lines 53-67); transferring the information and current quantity from the

handheld device ("These transaction messages are sent to other components of the system..." col.

6, lines 63-67) (figs. 40 and 55; col. 56, line 1 through col. 57, line 49); automatically comparing

the current quantity to a par level of the items to be restocked, for example, Frederick teaches in

col. 6, lines 41-67 that:

> "The storage locations for items that are not tracked to patients are preferably marked to show a desired
> level or quantity (a "par value") of medical items that should be kept in the storage location. If the level of medical
> items in the location drops and a user observes that it is below par value, the user may scan the indicia with the
> reading device. The reading device is preferably configured to treat the scanning of indicia corresponding to a
> storage location, absent previously inputting data related to a user or a patient, as indicative of a quantity condition
> at the location which corresponds to the storage location being below par value.
>
> Alternatively, when all the medical items have been removed from the storage location the user may
> operate the reading device to read the further indicia adjacent the storage location representative of the condition that
> all the medical items in the location have been depleted. Such a condition is an alternative quantity condition, which
> causes different signals to be generated by the system from those corresponding the first quantity condition.
> Transaction messages comprised of signals are produced by the reading device corresponding to the different
> quantity conditions. These transaction messages are sent to other components of the system, and in the case of
> messages which indicate that a storage location is below par value or depleted, are responded to by restocking the
> storage location with an additional quantity of medical items."

Wherein, the user may scan the indicia with the reading device. The reading device is

preferably configured to treat the scanning of indicia corresponding to a storage location, absent

previously inputting data related to a user or a patient, as indicative of a quantity condition at the

location which corresponds to the storage location being below par value." (col. 6, lines 46-52),

that is the indicia is read by the reading device; then the information, which is read from the

indicia, is processed/compared with the par value stored within the reading-

device/computer/component, which is "automatically comparing the current quantity to a par

level of the items to be restocked" as set forth in the claim; and generating a restocking package

in response to the automatic comparing. For example,

> "Transaction messages comprised of signals are produced by the reading device corresponding to the
> different quantity conditions. These transaction messages are sent to other components of the system, and in the case
> of messages which indicate that a storage location is below par value or depleted, are responded to by restocking the
> storage location with an additional quantity of medical items." (col. 6, lines 60-67; col. 6, lines 41-67).

Although, Frederick teaches "automatically comparing the current quantity to a par level

of the items to be restocked" by having a user observes that if the items on the open shelf are

below par value, the user may scan the indicia with the reading device. Frederick does not

specifically teach "automatically comparing, in a computing device, the current quantity to a par

level of the items."

Lift teaches automatically comparing, in a computing device, the current quantity

to a par level for the item ("if a proper dispensing has occurred, the transaction is recorded to the

data base 407, and the computer determines whether inventory is at or below a predetermined

restock value 408... (col. 18, lines 20-41))

It would have been obvious to an artisan of ordinary skill in the art to automate

Frederick's step of "automatically comparing the current quantity..." by having a user to observe

and scan the indicia if the items are below the par level to "automatically comparing in the

computing device the current quantity..." as taught by Lift in order to automating the manual

activity of the user. Such modification would have been an obvious expedient from Frederick's

teaching. Furthermore, automating a manual activity by providing an automatic or mechanical

means is not sufficient to distinguish over the prior art, In re Venner262F 2d.91, 95, 120 USPQ

193, 194 (CCPA 1958) MPEP 2144.04[R1] II1.

Re claims 18 and 26: Frederick teaches the transferring by transmitting the information

over a wireless link (col. 45, lines 40-45; col. 8, lines 17-37).

Re claims 19 and 27: Frederick teaches the transferring includes inserting the handheld

device into a docking station (cradle 354 in fig. 40) located proximate to the open shelving

system ("The reading device is eventually again placed in communication with the network 328.

This may be done by returning it to its cradle..." (col. 54, lines 53-56)) (col. 41, lines 1-23; col.

47, lines 1-12).

Re claims 20 and 28: Frederick teaches the method further including selecting

 information identifying an item not represented by an indicia (e.g., keyboard, mouse, touch

 screen, Spoken word recognition, etc (col. 19, lines 28-33)) on the open shelving system and

inputting to the handheld device a current quantity of the item to be stocked in the open shelving

unit (col. 19, lines 20-37; col. 17, lines 21-29; col. 40, lines 16-31).

Response to Arguments

4.   Applicant's arguments filed 12/07/07 have been fully considered but they are not

persuasive. (See examiner remarks).

REMARKS:

In response to the applicant's argument that the references fail to disclose the limitations

of claims 15 and 23, the examiner respectfully disagrees. For instance, the applicant argues that

Liff does not disclose "receiving into the handheld device a quantity of item requested....", these

limitation are taught by Frederick. The applicant cannot argue the references individually when

the rejections are based on a combination of the references. Frederick teaches a handheld device

542 for receiving the quantity of item requested at a decentralized location and receiving into

work station 548 a current quantity of said items stored in a centralized storage location. Re

queuing in a computing device in a computing device a restocking package to be process for the

decentralized location, Frederick teaches generating a restocking report, this is considered as

queuing or the information (restocking information) has to be queued before a report is

generated (see fig. 55; col. 56, line 37 to col. 57).

In response to the applicant's argument the reference Frederick et al do not disclose

inputting specific quantity, the examiner respectfully disagrees. Frederick et al **disclose:"**

It should be understood that for storage locations which hold medical items which are counted and/or tracked by
unit, the computer may calculate, and the data store may include, data representative of the number of units
remaining in each storage location. However, it is also possible to include among or on the units of medical items
machine readable indicia, which can be used to indicate that the number of medical items in the storage location
has fallen to a level where restocking is required." (see col. 43, lines 13-25).

The applicant's argument is not persuasive. With respect to the limitation "automatically

comparing the quantity to determine if restocking is required, Frederick teaches that the number

of units is inputted into the system in order to verify whether the quantity has fallen to level

requiring restocking, the comparing step is included so as to determine whether to restock or not.

The reference (Frederick et al) as modified by Lift et al renders the claims obvious.

In response to applicant's arguments against the references individually, one cannot show

nonobviousness by attacking references individually where the rejections are based on

combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re

Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Note

5.   Examiner has cited particular columns and line numbers in the references as applied to

the claims above for the convenience of the applicant. Although the specified citations are

representative of the teachings of the art and are applied to the specific limitations within the

individual claim, other passages and figures may apply as well. It is respectfully requested from

the applicant in preparing responses, to fully consider the references in entirety as potentially

teaching all or part of the claimed invention, as well as the context of the passage as taught by

the prior art or disclosed by the examiner.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Daniel St.Cyr whose telephone number is 571-272-2407. The

examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Michael G. Lee can be reached on 571-272-2398. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DS
January 14, 2009
/Daniel St.Cyr/

Primary Examiner, Art Unit 2876

Application Number	Application/Control No.	Applicant(s)/Patent under Reexamination
	10/820,209	LUNAK ET AL.
	Examiner	**Art Unit**
	Daniel St.Cyr	2876